FILE COPY

FILED
SEP 22 1943
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1942.

No. 56.

THE ATLANTIC REFINING COMPANY, Owner of the Tank Steamship "BOHEMIAN CLUB",

Petitioner,

v.

A. P. MOLLER, Claimant of the Motor Vessel "LAURA MAERSK",

Respondent.

BRIEF FOR PETITIONER.

OTTO WOLFF, JR.,
1500 Lincoln-Liberty Bldg.,
Philadelphia, Pa.,
Counsel for Petitioner.

International, 236 Chestnut St., Philadelphia

INDEX.

	Page
Opinions Below	1
Jurisdiction of This Court	1
Statement of the Case	2
(a) The Facts	2
(b) The Proceedings in the Courts Below	5
Specification of the Assigned Errors Intended to Be Urged	6
The Question Presented to This Court by the Petition for Writ of Certiorari	7
Argument	8
I. The Prohibition of the Act of March 3, 1899, which provides that it shall not be lawful for a vessel to anchor in a navigable channel in such a manner as to prevent or obstruct the passage of other vessels, is not absolute. The vessel may have an interest which will excuse her	8
II. The "Bohemian Club" was forced to anchor in the navigable channel of the Delaware River because of fog	12
III. The decision of the master of the "Bohemian Club" to move his vessel away from the buoy, at the time and under the circumstances shown, was proper	15
IV. The decision of the majority of the Circuit Court of Appeals was induced by a misapprehension of the uncontradicted facts in evidence; is unsupported by authority; and misinterprets the Act of March 3, 1899	23

INDEX—Continued.

Page

V. Under the doctrine of major and minor fault, any doubt regarding the management of the "BOHEMIAN CLUB", or the contribution of her fault, if any, to the collision, should be resolved in her favor 28

VI. Conclusion 31

Appendix to Brief. Act of March 3, 1899, c. 425, Sec. 15, 30 Stat. 1152; U. S. C. Title 33, Sec. 409 32

Drawing illustrating the findings made by the Courts below with respect to the position of the "BOHEMIAN CLUB" in the channel limits (1) immediately before moving away from the buoy 2-D, and (2) at the time of the collision. *inside back cover*

TABLE OF CASES CITED.

	Page
A. P. Skidmore, The (C. C. A. 2) 115 Fed. 791	18
Alexandre v. Machan, 147 U. S. 72	28
Battler, The (C. C. A. 3) 72 Fed. 537; cert. den. 163 U. S. 697	19
Belden v. Chase, 150 U. S. 674	20
Caldy, The (D. of Md.) 123 Fed. 802, affirmed (C. C. A. 4) 153 Fed. 837	8
City of Birmingham, The (C. C. A. 2) 137 Fed. 555; cert. den. 199 U. S. 607	11
City of Norfolk, The (C. C. A. 4) 266 Fed. 641; cert. den. 253 U. S. 491	9, 10, 19
Chattahoochee, The, 173 U. S. 540	20
Clarence L. Blakeslee, The (C. C. A. 2) 243 Fed. 365.	18
Europe, The (C. C. A. 9) 190 Fed. 475	8
Garden City, The (C. C. A. 6) 127 Fed. 298	19
Itasca, The (S. D. of Ga.) 117 Fed. 885	12
Lehigh, The (E. D. of N. Y.) 15 Fed. Supp. 425; aff. (C. C. A. 2) 84 Fed. (2d) 1002	12
Limon, The, 35 Fed. (2d) 730 (C. C. A. 1)	11
Nacoochee, The, 137 U. S. 331	30
Socony No. 9, The (C. C. A. 2) 74 Fed. (2d) 233	9, 18, 19
Southern Cross, The (C. C. A. 2) 93 Fed. (2d) 297	11
Strathleven, The, 213 Fed. 975	21
Thompson v. The Great Republic, 90 U. S. 20, 23 Wall. 20	28
Umbria, The, 166 U. S. 404	30
Victory, The, 168 U. S. 410	29, 31
Welcombe, The (E. D. of N. Y.) 19 Fed. Supp. 874	11

STATUTES CITED.

	Page
Judicial Code, Sec. 240 (a); 43 Stat. 938; U. S. C. Title 28, Sec. 347	1
Act of March 3, 1899; 30 Stat. 1152; U. S. C. Title 33, Sec. 409	6, 8, 23, 32
Inland Rules of Navigation, Art. 16, Act of June 7, 1897; 30 Stat. 99; 33 U. S. C. A. Sec. 192	30
Inland Rules of Navigation, Art. 25, Act of June 7, 1897; 30 Stat. 101; 33 U. S. C. A. Sec. 210	20

IN THE

Supreme Court of the United States.

No. 56. October Term, 1943.

THE ATLANTIC REFINING COMPANY, OWNER OF THE TANK-STEAMSHIP "BOHEMIAN CLUB",
Petitioner,

against

A. P. MOLLER, CLAIMANT OF THE MOTOR-VESSEL "LAURA MAERSK",
Respondent.

BRIEF FOR PETITIONER.

OPINIONS BELOW.

The opinion, findings of fact, and conclusions of law of the District Court are officially reported in 40 Fed. Supp. 641, and are printed in the record (R. 92). The opinions of the majority, and of the dissenting judge, of the Circuit Court of Appeals are officially reported in 134 Fed. (2d) 1000, and are printed in the record (R. 103 and 110; and, sur rehearing, R. 115 and 117).

JURISDICTION OF THIS COURT.

The suit is in admiralty, and involves the question of liability for a collision between two vessels on the Delaware River. The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925; 34 Stat. 938; U. S. C. A. Sec. 347.

STATEMENT OF THE CASE.

(a) The Facts.

The findings of fact made by the District Court (R. 92) were accepted by the Circuit Court of Appeals as the facts in the case (p. 104) and are not disputed.

At about 7.30 A. M. on December 20, 1939, the Tank Steamship "Bohemian Club", owned and operated by the petitioner, The Atlantic Refining Company, while proceeding up the Delaware River, bound for Philadelphia, turned off the Newcastle range and into the Bulkhead Bar range section of the river, and shortly thereafter encountered a dense fog (Fdg. 7, R. 93; R. 104). No buoys were visible; there were no anchorages within five miles; and after proceeding a short distance ahead the "Bohemian Club" was anchored at 7.41 A. M. (Fdg. 8, R. 93; R. 104.)

Shortly after 10 A. M. a flash buoy, known as 2-D, on the easterly edge of the channel, at the intersection of the Bulkhead Bar and Deepwater Point ranges, first became visible to those on the "Bohemian Club" and was sighted by them about 150 feet distant, at an angle of about 45 degrees off the vessel's starboard bow (Fdg. 9, R. 93; R. 104). The tide was ebb and was due to change to flood approximately two hours later (Fdg. 13, R. 93; R. 104).

Being of the opinion that if compelled to remain at anchor where he was, his vessel would be in danger of fouling the buoy, 2-D, in swinging with the tide when it changed from ebb to flood, (R. 10), the master of the "Bohemian Club" decided to move away from the buoy, to a point further downstream (R. 3 and 10). With that intention he lifted his anchor at 10.13 A. M. (Fdg. 14, R. 93; R. 104); and in order to hold the ship's head up and to

counteract the set of the ebb tide (R. 3), which was in a southwesterly direction (Fdg. 17; R. 94), he put his engines slow ahead, for two minutes, and his rudder hard over to the right (Fdg. 14, R. 93; R. 104). At 10.15 A. M. he stopped his engines (Fdg. 14, R. 93; R. 104), and was then free with the outflowing tide, for about three minutes (R. 12) until 10.18 A. M., when, because of a sudden redescent of the fog which obscured the buoy, and thereby left him without any indicia of position, he was again forced to anchor (R. 41; Fdg. 14, R. 93; R. 105). The fog did not lift until the "LAURA MAERSK" came into collision with the "BOHEMIAN CLUB" (Fdg. 25, R. 94), and its density was such that the buoy 2-D did not again become visible until then (R. 17, 36, 55, 58). The master of the "BOHEMIAN CLUB" did not know the exact position within the channel limits where she was anchored until after the collision (R. 11; Fdg. 19, R. 94; R. 105); but the courts below found she was anchored near the intersection of the Bulkhead Bar and Deepwater Point range lines, with her bow approximately on the Bulkhead Bar range line and her stern tailing to the westward thereof (Fdg. 21, R. 94; R. 105), where they held she "presented an obstruction to the free passage of other vessels, particularly those approaching from the other range" (Fdg. 24, R. 94; R. 105). All measures required of a vessel at anchor in time of fog were taken by those in charge of the "BOHEMIAN CLUB" (Conclusion 3, R. 100); her master and third officer were stationed on her bridge; a trained and experienced seaman was on her forecastle as look-out; a black ball two feet in diameter was attached to her foretop mast stay; and her fog bell located on her forecastle head was rung rapidly for five seconds at minute intervals (Fdg. 26, R. 94; R. 105).

The "LAURA MAERSK", meanwhile, was proceeding down the Delaware River at varying speeds of from 13 to 18 knots an hour (Opinion, Circuit Court of Appeals, R. 105), and those in charge of her navigation were not aware of the presence of the "BOHEMIAN CLUB" until they saw her loom up out of the fog about 400 feet distant, bearing slightly off their port bow (Fdgs. 36 and 37, R. 95 and 96; R. 105). Before the "LAURA MAERSK" could be brought to a stop she collided with the anchored "BOHEMIAN CLUB", head on, at about 11.37 A. M. (Fdg. 40, R. 96; 106). At the time of the collision the heading of the "BOHEMIAN CLUB" had settled to 30 degrees (Fdg. 16, R. 94; R. 105).

For the purpose of assisting the Court in visualizing the findings made by the courts below with respect to the position of the "BOHEMIAN CLUB" within the channel limits (1) immediately before she lifted her anchor preparatory to moving away from the buoy 2-D, and (2) immediately before the collision, we have transcribed these findings on the drawing hereto attached. It shows the "BOHEMIAN CLUB", in the position "A", immediately before moving away from the buoy 2-D, lying diagonally across the channel on the easterly side of the Bulkhead Bar range line, headed on 30 degrees (Fdg. 10, R. 93; R. 104), with the buoy at an angle of 45 degrees off her starboard bow, and 150 feet distant (Fdg. 9, R. 93; R. 104). It also shows the "BOHEMIAN CLUB", in the position "B" immediately before the collision, headed on 30 degrees (Fdg. 16, R. 94; R. 104) with her bow on the Bulkhead Bar range line, near its juncture with the Deepwater Point range line, and with her stern tailing to the westward

thereof (Fdg. 21, R. 94; R. 105). It also shows:—the course, 9 degrees up the Bulkhead Bar range line (R. 16); the 34 degree turn from the Bulkhead Bar range into the Deepwater Point range (Fdg. 20, R. 94; R. 104); the channel width on the easterly side of the Bulkhead Bar range line, 400 feet (Fdg. 11, R. 93; R. 104); and the channel width on the westerly side of the Bulkhead Bar range line, 800 feet (Fdg. 12, R. 93; R. 104). The scale of the drawing is 200 feet to the inch.

(b) The Proceedings in the Courts Below.

The petitioner, The Atlantic Refining Company, as owner of the "BOHEMIAN CLUB", instituted a suit in admiralty in the District Court of the United States for the Eastern District of Pennsylvania against the "LAURA MAERSK", *in rem*, for the recovery of damages, in the sum of approximately $40,000.00, sustained by the "BOHEMIAN CLUB" when in collision with the "LAURA MAERSK." The respondent, A. P. Moller, denied that the collision resulted from any fault on the part of the "LAURA MAERSK", and as the managing owner and claimant of the "LAURA MAERSK", filed a cross-libel against the "BOHEMIAN CLUB" *in rem*, and against The Atlantic Refining Company *in personam*, for the recovery of damages to the "LAURA MAERSK" in the sum of approximately $15,000.

The District Court held the "LAURA MAERSK" solely at fault for the collision, and entered an Interlocutory Decree (R. 100) wherein it awarded The Atlantic Refining Company the full amount of its damages, together with interest and costs, and dismissed the respondent's cross-libel with costs. The respondent appealed.

The Circuit Court of Appeals for the Third Circuit affirmed the conclusion of the District Court that the "LAURA MAERSK" was at fault; but a majority of the Court were of the further opinion (R. 103) that the "BOHEMIAN CLUB" was guilty of a contributing statutory fault in that she had unjustifiably violated the Act of March 3, 1899, 30 Stat. 1152, U. S. C. A. Title 33, Sec. 409, which provides that it shall not be lawful for a vessel to anchor in a navigable channel in such a manner as to prevent or obstruct the passage of other vessels. The dissenting judge filed a dissenting opinion (R. 110). The petition of The Atlantic Refining Company for a rehearing was granted; and in their opinions sur rehearing the majority of the court reaffirmed their previous conclusion that the "BOHEMIAN CLUB" and the "LAURA MAERSK" were both at fault (R. 115), and the dissenting judge reiterated his previous dissent (R. 117). On March 17, 1943, the court entered a judgment (R. 119) whereby it confirmed its prior judgment of October 21, 1942, (R. 112) wherein it reversed the decree of the District Court, with costs, and remanded the cause to the District Court for further proceedings in accordance with the opinion of the court.

SPECIFICATION OF THE ASSIGNED ERRORS INTENDED TO BE URGED.

1. The Circuit Court of Appeals for the Third Circuit erred in reversing the decree of the District Court of the United States for the Eastern District of Pennsylvania.

2. The Circuit Court of Appeals for the Third Circuit erred in holding that the master of the "BOHEMIAN CLUB" was guilty of a statutory fault.

3. The Circuit Court of Appeals for the Third Circuit erred in holding that the position in which the "BOHEMIAN CLUB" was anchored at the time of the collision was a violation of a statutory rule which cannot be justified by a necessity for anchoring resulting from her change of position in foggy weather.

THE QUESTION PRESENTED TO THIS COURT BY THE PETITION FOR WRIT OF CERTIORARI.

Is a navigator, who is compelled to anchor his vessel, because of fog, in the navigable channel of a river, and who, upon ascertaining during a temporary lift in the fog that his position is one of danger, inaugurates a manoeuvre to place his vessel in a position of greater safety, but who, before completing his manoeuvre, is again compelled to anchor because of a sudden redescent of the fog which blots out all indicia of position, and who thereupon anchors his vessel in a position where, unknown to himself at the time, she obstructs the passage of other vessels on that side of the channel in which she is anchored, guilty of a violation of the Act of Congress approved March 3, 1899?

Argument.

I.

THE PROHIBITION OF THE ACT OF MARCH 3, 1899, WHICH PROVIDES THAT IT SHALL NOT BE LAWFUL FOR A VESSEL TO ANCHOR IN A NAVIGABLE CHANNEL IN SUCH A MANNER AS TO PREVENT OR OBSTRUCT THE PASSAGE OF OTHER VESSELS, IS NOT ABSOLUTE. THE VESSEL MAY HAVE AN INTEREST WHICH WILL EXCUSE HER.

The Act of March 3, 1899, c. 425, sec. 15, 30 Stat. 1152, 33 U. S. C. 409, is set out in full in the appendix hereto. The provision of the Act relevant to this proceeding reads as follows:

> "It shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft; * * * "

The words "prevent or obstruct", as used in the Act, have been held to connote limited restraint, rather than an absolute or complete prohibition. In *The Europe*, 190 Fed. 475 at 479, the Circuit Court of Appeals for the Ninth Circuit referring to the Act of March 3, 1899, said:

> "We also hold that the words 'prevent or obstruct', in this statute, are positive words indicative of limited restraint and of legislative intent to not interfere with the right use of waterways by imposing an absolute or unreasonable prohibition."

In *The Caldy*, 123 Fed. 802 (D. of Md.), affirmed 153 Fed. 837 (C. C. A. 4), the District Court said, p. 805:

"Unquestionably, the Act of Congress being in aid of commerce and navigation should receive a sensible construction to further that end, . . ."

And in *The City of Norfolk*, 266 Fed. 641, cert. den. 253 U. S. 491, the Circuit Court of Appeals for the Fourth Circuit said (italics supplied) at p. 644:

"* * * the statute was intended as an explicit legislative statement that the dominant use of channels is for passage and not anchoring, and it does not permit a vessel to anchor *voluntarily* in a channel * * *."

In construing the Act the Courts have, without exception, held that a vessel may have an interest which will excuse her from anchoring in a navigable channel in a manner which would otherwise be a violation of the Act.

In *The Socony No. 9*, 74 Fed. (2d) 233, the Circuit Court of Appeals for the Second Circuit held (italics supplied) p. 234:

"It is quite true that the general duty of a vessel not to anchor in a fairway (Section 409, title 33, U. S. Code), exists in a fog as well as at any other time. La Bourgogne, 86 Fed. 475 (2 C. C. A.); The Persian, 181 Fed. 439 (2 C. C. A.). But like most duties, *it is not absolute;* she may have an interest *which will excuse her;* for example, *the fog may be so dense*, the quarters so close, and a safe berth so difficult and dangerous to reach, that *the balance of advantage to all concerned makes it best to anchor where she is.* In the case at bar it was theoretically possible for the tugs to try for some Staten Island slip nearby. When questioned, the master of the Joyce Card, who was in charge, would only answer that 'with that draft of water we can't go into every pier', and that it seemed safer for his own vessel to stay where he was. *That*

was not a very convincing excuse, and yet we are disposed *to accept his judgment made at the time,* under the doctrine of A. P. Skidmore, 115 Fed. 791 (C. C. A. 2); City of Norfolk, 266 Fed. Rep. 641, 645, (C. C. A. 4) and the Northern Queen, 117 Fed. 906. * * *"

"The choice was doubtful whatever it was, and there is no such clear weight against the master's judgment, *made on the spot,* as to charge his vessels."

In *The City of Norfolk, supra,* (266 Fed. 641, 645) the Circuit Court of Appeals for the Fourth Circuit also held (italics supplied):

"Since a vessel anchored in a channel and not visible because of a fog is usually a dangerous obstruction to navigation, does the Act of 1899 forbid anchoring in a channel in a fog? * * * If the fog is so dense as to justify the master in believing that another vessel going at a moderate speed could not be seen at the distance in which he could stop his vessel, and that the two vessels would be in danger of collision, *then the master should anchor and give the statutory signals. Even if he thus obstructs the channel, he is not responsible, because it is done under necessity.* . . . If the navigator of the vessel upon careful consideration of all the circumstances, reasonably concludes that necessity requires anchorage he should not be held in fault, and in case of collision *should be held entitled to the presumption in favor of a vessel at rest against a moving vessel.*"

The decisions in cases in which vessels have been held at fault for violating the prohibition of the Act, have, in every instance, been based *not* upon the mere fact that the vessel was anchored in a navigable channel in such a manner as to prevent or obstruct the passage of other vessels,

but upon a finding that she was so anchored *without justification or excuse*. Thus:

In *The Limon* (C. C. A. 1) 35 Fed. (2d) 730, the Court held, p. 731:

> "She was not forced to this anchorage by any sudden and unavoidable emergency."

In *The Southern Cross* (C. C. A. 2) 93 Fed. (2d) 297, the Court held (italics supplied), p. 299:

> "Anchoring thus in the fairway was an obstruction to navigation and a fault which helped to bring about this collision. * * * *There was no emergency requiring her to do so.*"

In *The City of Birmingham* (C. C. A. 2) 138 Fed. 555, cert. den. 199 U. S. 607, the Court held (italics supplied), p. 559:

> "The Courts should not encourage laxity and shiftlessness by rewarding a master who places his craft in a position of danger *simply because it is too much trouble to place her in a position of safety*;"

and in denying a petition for a rehearing the Court said (italics supplied) p. 560:

> "Irrespective of the statute, the dredge was at fault in anchoring where she did at night, when there was *nothing to prevent her* from removing to a position where it would have been impossible for steamers to have reached her."

In *The Welcombe* (D. C., E. D. of N. Y.), 19 F. Supp. 874, the Court held (italics supplied), p. 875:

> "*There was no justification* for the 'Welcombe' anchoring in the channel, she had *sufficient warning of*

the fog and had *ample opportunity* to anchor at Mayport instead of anchoring as she did in the channel."

In *The Itasca* (D. C. S. D. of Ga.) 117 Fed. 885, the Court held (italics supplied), p. 886:

> "The libellants violated the law, in that the dredge anchored in a deep navigable portion of the channel, in violation of the Act of Congress, approved March 3, 1899, *when she could have been readily hauled out into water where the* ITASCA *could not possibly have gone.*"

In *The Lehigh*, 15 Fed. Supp., 425 (E. D. of N. Y.), affirmed 84 Fed. (2d) 1002 (C. C. A. 2), the District Court for the Eastern District of New York held (italics supplied), p. 426:

> "The fact that the fog came up suddenly did not justify the 'BARWICK' in anchoring immediately, but it was her duty to seek proper anchorage. *Such an anchorage was available.*"

In the light of these authorities, we therefore respectfully submit, the first question to be determined in the instant case is whether or not the "BOHEMIAN CLUB" encountered an emergency which required her to anchor where and when she did.

II.

THE "BOHEMIAN CLUB" WAS FORCED TO ANCHOR IN THE NAVIGABLE CHANNEL OF THE DELAWARE RIVER BECAUSE OF FOG.

When the "BOHEMIAN CLUB" was first anchored at 7.41 A. M. she was in the navigable channel of the Delaware River, on the easterly side of the Bulkhead Bar range line; and when, following her brief maneuver to shift her

position away from the Buoy 2-D, she again anchored at 10.18 A. M., her bow was on the range line, with "her stern tailing on or to the westward thereof" (Finding 21; R. 94).

The District Court and the Circuit Court of Appeals were both of the opinion that she was without fault in anchoring where she did at 7.41 A. M. (District Court, Conclusion I, R. 100). The Circuit Court of Appeals held (R. 116):

> "The trial judge found, and we have already adopted the finding, that the 'BOHEMIAN CLUB's' second anchorage was made 'in such a manner as to present an obstruction to the free passage of other vessels, particularly ones approaching from the other range.' But the trial judge did not find, nor do we, that the 'BOHEMIAN CLUB's' first anchorage similarly offended."

The necessity for anchoring the vessel at 7.41 A. M. was apparent. The fog was so thick that there was no visibility at all (R. I, 46); the nearest anchorage grounds were four or five miles distant (R. 47); and none of the channel buoys, which were the vessel's only aids to navigation, were visible (R. 46).

Before the 'BOHEMIAN CLUB" lifted her anchor at 10.13 A. M., preparatory to moving away from the buoy 2-D, the buoy had been visible for about 5 or 10 minutes (R. 58), but a sudden redescent of the fog, at 10.18 A. M., obscured it entirely (R. 17, 48, 55). The Circuit Court of Appeals held (R. 104-105):

> "At 10.15 A. M. her engines were stopped and at 10.18 A. M. her anchor was dropped, as the fog had again set in to the extent of obscuring buoy 2-D entirely."

The fog did not lift, and the buoy 2-D did not again become visible, until the "LAURA MAERSK" came into collision with the "BOHEMIAN CLUB" (R. 17, 36, 55, 58; Fdg. 25,

R. 94), while the "BOHEMIAN CLUB" was still lying at anchor (Opinion R. 92).

But although the majority of the Circuit Court of Appeals recognized the necessity for again anchoring the "BOHEMIAN CLUB" at 10.18 A. M., they, nevertheless, held (R. 109):

> "Yet, merely to avoid the possibility of fouling the buoy, when his vessel would swing round on the turn of the tide, he (i. e. the master of the 'BOHEMIAN CLUB') lifted anchor and maneuvered his boat in weather so unsettled that within five minutes after lifting anchor and when, because of the density of the redescending fog, he no longer knew where he was, he found it necessary again to drop anchor. * * * The master having deliberately lain his vessel open to the peril which caused him to violate a statutory rule, may not then point to the fog for legal justification of his conduct * * * ."
>
> "In view of the tanker's particular fault (unjustifiable violation of a statute) little need be said as to its contribution to the collision."

That conclusion, said the dissenting judge of the Circuit Court of Appeals, "puts far too heavy a burden upon the master of any vessel situated as was the "BOHEMIAN CLUB" fog-bound upon the Delaware River on the morning of December 20, 1939" (R. 110); and in his dissenting opinion sur rehearing (R. 118 and 119) he further said:

> "The majority rule requires the master of the 'BOHEMIAN CLUB' to have possessed prescience, *to have had knowledge* that the 'LAURA MAERSK' would be operated negligently and to have known also that if he moved the 'BOHEMIAN CLUB' from her first anchorage he would move her into a position of danger from a negligently operated vessel moving down stream. This rule misinterprets the Act of March 3, 1899, * * * It is a very novel rule. It substitutes the Court's knowledge *post* the event for a master's judgment exercised

reasonably in an emergency. The rule renders navigation more difficult, for a vessel once anchored because of fog must remain at its first anchorage even if it be in a dangerous position, until the fog has lifted, not momentarily, but completely. I think it is unfortunate that this jurisdiction, which includes within its territorial limits one of the great rivers of the country, should embrace such a rule."

We therefore respectfully submit that the real question in the case is not whether it again became necessary to anchor the "BOHEMIAN CLUB" at 10.18 A. M., *since that was conceded*, but whether, in view of the grounds upon which the majority of the Circuit Court of Appeals held that she had unjustifiably violated the statute, the decision of her master to move away from the buoy 2-D, in order to avoid the danger of fouling it, was a statutory fault.

III.

THE DECISION OF THE MASTER OF THE "BOHEMIAN CLUB" TO MOVE HIS VESSEL AWAY FROM THE BUOY, AT THE TIME AND UNDER THE CIRCUMSTANCES SHOWN, WAS PROPER.

The Act of March 3, 1899, "being in aid of commerce and navigation", should, "unquestionably", as was said by the Court in *The Caldy*, *supra*, (p. 8 of this brief) "receive a sensible construction to further that end"; and any construction of the Act which will prohibit or discourage a navigator from instituting such precautionary measures as he may regard as essential for the safety of his own vessel, and especially when he can do so without endangering any other vessel, if such other vessel is herself being navigated with the care which the situation requires, is contrary, we respectfully submit, to the intendment of the Act and to its primary purpose to promote safety.

When the master of the "BOHEMIAN CLUB" first became aware, at about 10 A. M., that his vessel was in a posi-

tion where she would incur the danger of fouling the buoy, 2-D, if unable, because of continuing fog, to proceed up the river before the tide changed from ebb to flood, he was confronted with a situation in which his only alternative was either (1) to remain where he was, and thereby incur the risk of fouling the buoy, or (2) to move his vessel to a position of safety while the opportunity presented itself. It was a situation in which, under the prevailing weather conditions, there was little time for deliberation, as the trial judge held (R. 98). The weather was unsettled, and he therefore had no means of knowing how long he might be compelled to remain at anchor before being able to proceed ahead. Because of fog on the evening before, December 19th, while on the Liston Range section of the Delaware River, he had been obliged to anchor at 9.46 P. M., and to remain at anchor until 4.58 A. M. on the following morning—a period of approximately 7 hours (R. 8 and 9).

When he concluded to move his vessel away from the buoy he exercised the judgment of an experienced navigator;—he was licensed for all oceans, and for vessels of any tonnage, and he also held a first-class pilot's license for the Delaware Bay and River (R. 8). The trial judge held that his decision was a "reasonable" one (R. 97); and the learned dissenting judge of the Circuit Court of Appeals said (R. 111) that "in moving the tanker to avoid the buoy he acted prudently. He took his vessel out of a position of positive danger while he could do so." *There was no evidence to support any finding that his decision to move away from the buoy was either imprudent, unreasonable, or improper.* On the contrary, the respondent's contention at the trial, was *not* that the "Bohemian Club" ought to have remained at anchor where she was, but that when the fog partially lifted shortly after 10 A. M. she

ought either to have proceeded around the bend and to have anchored on the Deepwater Point Range, or ought to have sought an anchorage outside the channel limits on the Bulkhead Bar Range. As to these contentions, the learned trial judge said (R. 98):

> "It was suggested at the trial and argued later that the 'BOHEMIAN CLUB' should have proceeded around the bend and anchored on the Deepwater Point Range when the fog cleared partially shortly after 10 A. M., or should have sought an anchorage outside the Bulkhead Bar Range channel at that time. The former course, though open to the 'BOHEMIAN CLUB', was hazardous, as the fog might have obscured the buoy, as it did, before the 'BOHEMIAN CLUB' could have negotiated the turn and directed herself to a safe point of anchorage on the eastern side of the channel. The latter course was not open to the 'BOHEMIAN CLUB' because her draft was too great to risk proceeding outside the channel at that point."

That the danger of fouling the buoy was real, is apparent, we respectfully submit, from the uncontradicted facts in evidence. When the "BOHEMIAN CLUB" first anchored at 7.41 A. M. her heading was about 9 degrees (R. 10) and the tide was flood (R. 39); at 8.40 A. M. it had started to ebb (R. 90) and at 9.10 A. M. it had settled down to ebb (R. 39). During the flood stage of the tide the "BOHEMIAN CLUB" swung off as far as 110 degrees (R. 40), and at 8.10 A. M. was "lying across the channel at right angles" (R. 50). At 9.10 A. M., when the tide had settled down to ebb, she was headed on 30 degrees (R. 39), and maintained that heading until the collision occurred (R. 39). She did not foul the buoy while swinging with the flood tide because, as the testimony further shows (R. 45),

the change in the tide from flood to ebb is "a very gradual change"—"the force in the flood tide will gradually diminish and you will have a period of slack water"—"when there is no tide at all." The slack water interval, when there is no tide at all, lasts for a period of from 40 to 45 minutes (R. 50). The fact that the "BOHEMIAN CLUB" did not foul the buoy during the last stages of the flood tide therefore affords no basis for determining what might have happened had she been subjected to the full strength of the flood tide for a longer period, as she would have been had she been compelled to remain at anchor where she was at 10 A. M.

It is a fundamental principle of the maritime law that navigators are not to be charged with negligence unless they make a decision which nautical experience and good seamanship would condemn as unjustifiable at the time and under the circumstances shown.

In *The Clarence L. Blakeslee* (C. C. A. 2) 243 Fed., 365, the Court held, p. 366:

> "Navigators are not to be charged with negligence, unless they make a decision which nautical experience and good seamanship would condemn as unjustifiable at the time and under the circumstances shown. The Nannie Lamberton, 85 Fed., 983, 29 C. C. A. 519. The line of demarcation between error of judgment and negligence is indicated in The E. B. Conine, 233 Fed., 987, 147 C. C. A. 661."

In *The A. P. Skidmore* (C. C. A. 2) 115 Fed. 791 (followed in *The Crown of Galicia*, 232 Fed. 305, and in *The Socony No. 9*, 74 Fed. (2d) 233), the Court held, p. 792:

> "It is easy to say, after an accident, that something could have been done to lessen the possibility of

one. In this case the question is whether at the time and under the circumstances reasonable prudence was observed. In a case like the present the court should put itself in the position of the master at the time, and, unless it is satisfied that he did not exercise the discretion consistent with sound judgment, should refuse to condemn his mistake as a fault. *Especially should the court be slow to hold such an error of judgment a fault contributory to a collision when there need have been no collision if the other and moving vessel had been cautiously and vigilantly navigated.*"

Similarly, in *The Battler* (C. C. A. 3) 72 Fed. 537, 540, 541, certiorari denied, 163 U. S. 697, the Court held:

"But, even if the proofs did not completely vindicate the tug's choice of an anchorage, still, in view of the conflict of opinion between the two sets of nautical witnesses, and under the facts shown, the utmost that could fairly be alleged against the master of the BATTLER would be that he made a mistake of judgment, as manifested by the result. The James P. Donaldson, 19 Fed. 264." • • •

"The master of the BATTLER is to be judged by the state of affairs which existed when he acted, and not by the after event."

To the same effect, see also:

The Garden City (C. C. A. 6) 127 Fed. 298, 300;
The Socony No. 9, 74 Fed. (2d) 233, 234;
The City of Norfolk (C. C. A. 4) 266 Fed. 641, 645.

The master of the "BOHEMIAN CLUB", moreover was entitled to assume, we respectfully submit, that any vessel under way would comply with the law, and would, in accordance with the rule of law declared by this court in

The Chattahoochee, 173 U. S. 540, 548, proceed through the fog at a rate of speed which would enable her, upon sighting another vessel, to stop in time to avoid a collision. When, therefore, he concluded to move his vessel away from the buoy to a position of safety, he was under no obligation to be solicitous over the possibility that if, because of the unsettled weather conditions, he might again be obliged to anchor before completing his manoeuver, another vessel, approaching in an unlawful manner, i. e. at an excessive rate of speed, as did the "LAURA MAERSK", might come into collision with him.

In *Belden v. Chase,* 150 U. S. 674, 699, this court said (italics supplied):

> "Masters are bound to obey the rules *and entitled to rely on the assumption that they will be obeyed,* and should not be encouraged to treat the exceptions as subjects of solicitude rather than the rules."

The drawing hereto attached shows the location of the "BOHEMIAN CLUB", as fixed by the findings made by the Courts below (page 4 of this brief), within the channel limits (1) in the position "A", immediately before she moved away from the buoy, and (2) in the position "B", at the time of the collision. Before moving away from the buoy she was lying diagonally across the easterly side of the channel, 400 feet wide, where, necessarily, she obstructed the passage of vessels bound *upstream,* whose duty it was to keep to their starboard, i. e. the *easterly,* side of mid-channel, under Article 25 of the Inland Rules of Navigation, Act of June 7, 1897, 30 Stat. 101; 33 U. S. C. A. sec. 210, which reads:

> "In narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of the

> fairway or mid-channel which lies on the starboard side of such vessel."

At the time of the collision, when her bow was on the Bulkhead Bar range line, and her stern was tailing to the westward thereof, she neither prevented or obstructed the passage of any vessel proceeding *upstream*, but the learned trial judge held (Finding 24; R. 94), presented "an *obstruction* to the *free passage* [emphasis supplied] of other vessels, particularly ones approaching from the other range", i. e. the Deepwater Point range. It can hardly be said, however, that she *prevented their passage*, since the channel on the westerly side of the Bulkhead Bar range line is 800 feet wide. Manifestly, any vessel proceeding, down stream, from the Deepwater Point range, and thus obligated to keep to her starboard, i. e. *the westerly*, side of the range line, could have passed the "BOHEMIAN CLUB" safely, with a clearance of at least 600 feet, *had she been navigated with the care which the situation required.* A vessel anchored in the navigable channel of a river is always, to some extent, an obstruction to the "free passage" of other vessels; but in *The Strathleven* (The Margaret J. Sanford), 213 Fed. 975, 977, the Circuit Court of Appeals for the Fourth Circuit, said (italics supplied):

> "If a vessel anchors at a point in the channel, where, notwithstanding such anchorage, other vessels navigated *with the care the situation requires* can safely pass, then she has neither violated the statute nor rendered herself liable under the general rules applicable to navigation *even though she has to a certain extent obstructed the channel.*"

Finally, we respectfully submit, it is always the duty of a navigator when confronted with a situation which he

believes to be one of danger to inaugurate such measures of safety as he, in the exercise of his judgment as an experienced navigator, may deem to be necessary and appropriate. That was precisely what the master of the "BOHEMIAN CLUB" did; and the maneuvers (pp. 2 and 3 of this brief) which he inaugurated in his endeavor to move away from the buoy show that he exercised a *carefully considered* judgment.

The possibility that, because of the unsettled weather conditions, he might be compelled to anchor before completing his maneuvers, was a contingency which did not, we respectfully submit, occasion any necessity for solicitude on his part. He was already, *unavoidably, because of necessity*, anchored within the channel limits in such a manner that he obstructed the passage of vessels proceeding upstream; and the possibility, therefore, that he might again be compelled to anchor, on the range line, or to the westward thereof, before completing his maneuvers away from the buoy, was a possibility which would leave him *no more of an obstruction than he had previously been.*

There was not a scintilla of evidence to sustain a finding that the decision of the master of the "BOHEMIAN CLUB" was either a culpable fault or an error of judgment. What constitutes good seamanship in any given situation, is a question which calls for expert opinion; and a court of law ought not, we respectfully submit, to substitute its own uninformed opinion for the considered judgment of an experienced navigator.

We therefore respectfully submit that in deciding to move his vessel away from the buoy, when the opportunity presented itself, the master of the "BOHEMIAN CLUB" acted

prudently; and that when within a very few minutes thereafter he was again compelled to anchor, because of the redescent of the fog which left him without any indicia of position, he did not unjustifiably violate the statute. There was no causal connection between his decision to move away from the buoy and the necessity which forced him to anchor.

IV.

THE DECISION OF THE MAJORITY OF THE CIRCUIT COURT OF APPEALS WAS INDUCED BY A MISAPPREHENSION OF THE UNCONTRADICTED FACTS IN EVIDENCE; IS UNSUPPORTED BY AUTHORITY; AND MISINTERPRETS THE ACT OF MARCH 3, 1899.

The reasons assigned by the majority of the Circuit Court of Appeals for their conclusion that the master of the "BOHEMIAN CLUB" had unjustifiably violated the prohibition of the Act of March 3, 1899, clearly show, we respectfully submit, that the majority of the Court did not have a clear conception of the uncontradicted facts in evidence.

The majority of the Court were of the opinion that since "three vessels proceeding down the river" (R. 104) had safely passed the "BOHEMIAN CLUB" before she moved, she did not prevent or obstruct the passage of other vessels at the point where she first anchored at 7.41 A. M. The three vessels in question, the "WHITE FLASH", the "FRANKLIN", and a Finnish vessel, passed her about 200 feet off (R. 7). The majority of the Court, however, failed to appreciate that the "BOHEMIAN CLUB" was then anchored on the *easterly* side of the range line, and that the three

vessels, "proceeding down the river", which passed her, were on the *westerly*, i. e. their starboard, side of the range line. The learned dissenting judge of the Court very pertinently observed (R. 118):

> "There is but one reason why the majority conclude that the Bohemian Club was not in a position of danger in the east part of the channel and was in a position of danger in the west part of the channel. The reason is that three vessels bound *downstream* passed the Bohemian Club while she was on the east side of the channel. They passed her, as would be expected, without mishap. If a vessel had attempted to move upstream on the east side of the range line (as negligently as did the Laura Maersk moving downstream) while the Bohemian Club was anchored in her first position inevitably a collision would have occurred."

In their opinion sur rehearing the majority of the court said (R. 116):

> "It is true that the later discovered presence of a buoy near at hand to the anchorage first made by the 'BOHEMIAN CLUB', plus a belief that the turn of the tide in about two hours would possibly bring the ship in contact with the buoy, presented a problem to the master of the vessel. It is also true that the master, and not a reviewing judge, was then and there in command and had the responsibility of making a decision as to the proper course of action in the circumstances, for which decision liability is not to be imposed for mere error in judgment. But it is equally our duty to pass upon that conduct afterwards, when the matter has become the subject of litigation, and to decide whether, in our judgment, what was done was done in the exercise of due care."

The majority of the court thus recognized the fundamental distinction between *negligence* and a mere *error in judgment;* and in a footnote indicated the reasons why, in their opinion, the master of the "BOHEMIAN CLUB" had not exercised due care. This footnote reads (R. 116):

> "Captain Down of the 'WHITE FLASH', a sister ship of the 'BOHEMIAN CLUB' and one of the ships which had passed downstream in safety while the 'BOHEMIAN CLUB' was at her first anchorage, testified at trial, as a witness for the libellant,—'Yes, I figured on anchoring if the weather stayed in that condition, as soon as I could, *off the ranges,* * * *'* (Emphasis supplied). But, the 'BOHEMIAN CLUB's' bow was right on the range line after she had made her second anchorage. Down also gave as 'one reason why' he had not anchored sooner than he did,—'* * * I thought I would get down as far as I could. With that draft I could anchor on the westward or eastward side *and be out of the channel of anything that was moving.*' (Emphasis supplied). Yet that was precisely what the master of the 'BOHEMIAN CLUB' did not do when he changed his place of anchorage."

It would thus appear that the majority of the court were of the opinion that the fault of the master of the "BOHEMIAN CLUB" lay in not doing what the master of the "WHITE FLASH" intended to do, i. e. "anchor off the ranges"—"out of the channel of anything that was moving"; and that conclusion, necessarily, assumes that the "BOHEMIAN CLUB" could have anchored "off the ranges", i. e. outside the channel limits. But it manifestly fails to recognize (1) that since, because of her length (483 feet 10 inches over all; Finding 4, R. 92) and her draft (27 feet forward and 27 feet 1 inch aft, Finding 5, R. 93) she would

have incurred the danger of running aground (R. 17), as the learned trial judge held (Opinion R. 98), in the shallow water outside the channel limits, had she attempted to anchor outside the channel; and that (2) within five minutes after lifting her anchor, at 10.13 A. M., she was again *forced to anchor*, at 10.18 A. M., because "the fog had again set in to the extent of obscuring buoy 2-D entirely." (Opinion, Circuit Court of Appeals, R. 105.) By no possibility, therefore, could the "BOHEMIAN CLUB" have completed the more extended maneuver to take her outside of the channel limits, even if her length and draft had made that possible.

The "WHITE FLASH", it should also be noted, was not a sister ship of the "BOHEMIAN CLUB", although both vessels were owned by the petitioner. The "BOHEMIAN CLUB", as stated, was 483 feet 10 inches in length (Finding 4, R. 92) and drew 27 feet forward and 27 feet 1 inch aft (Finding 5, R. 93); the "WHITE FLASH" was but 200 feet in length (R. 25), and her draft was only 9 feet 6 inches (R. 25). Captain Down of the "WHITE FLASH" therefore testified (R. 30):

> "With that draft I could anchor on the westward or eastward side and be out of the channel of anything that was moving;"

and again (R. 29):

> "I didn't have to keep in the channel if I didn't want to. In fact, I ran down the western side of the channel all the way down the river, frankly."

In a footnote (R. 117) to his opinion sur rehearing, the learned dissenting judge of the Court below said:

> ". . . The majority opinion quotes Captain Down of the motor vessel White Flash (one of the

vessels which passed the Bohemian Club going downstream when the Bohemian Club was anchored to the east of the range line) to the effect that the Bohemian Club could have anchored out of the channel on the Bulkhead Bar Range. An examination of the chart of the Delaware River in evidence shows the practical impossibility of such a course. Though there was some water both to the east and the west of the Bulkhead Bar Range which was deep enough to permit a vessel of the draft of the Bohemian Club to anchor, it is difficult to believe that a master could have picked it out in a fog. In addition, this deep water is so small in area and so close to shoal water or shore as to make such an operation difficult even in the best of weather."

We therefore respectfully submit that in holding that the master of the "BOHEMIAN CLUB" had unjustifiably violated the statute, the majority of the Circuit Court of Appeals rendered a decision which:—(*1*) *was induced by a misapprehension of the uncontradicted facts in evidence;* (*2*) *is unsupported by authority; and* (*3*) *misinterprets the Act of March 3, 1899, in that* (*a*) *contrary to the intendment of the Act and the fundamental considerations underlying all rules of navigation, it penalizes a navigator for inaugurating measures of precaution when confronted with a situation which he regards as one of danger to his vessel, and* (*b*) *renders navigation more difficult in that it places a navigator in a dilemma when confronted with a situation similar to that in the instant case, and thereby induces one of the principal causes for marine disasters, i. e. hesitation, doubt, and indecision as to what should be done in a time of emergency.*

V.

UNDER THE DOCTRINE OF MAJOR AND MINOR FAULT, ANY DOUBT REGARDING THE MANAGEMENT OF THE "BOHEMIAN CLUB", OR THE CONTRIBUTION OF HER FAULT, IF ANY, TO THE COLLISION, SHOULD BE RESOLVED IN HER FAVOR.

The doctrine of major and minor fault has been firmly established as a principle of maritime law.

In *Thompson v. The Great Republic*, 90 U. S. 20, 23 Wall. 20, the "Republic" overtook and came into collision with the "Cleona", proceeding ahead of her. Shortly before the collision occurred the "Cleona" changed her course, as she had a right to do, but failed to signal her intention to the "Great Republic' astern of her. This court held (p. 35)—

> "This omission was a fault, but this fault bears so little proportion to the many faults of the 'Republic'; that we do not think, under the circumstances, the 'Cleona' should share the consequences of this collision with the 'Republic.'"

In *Alexandre v. Machan*, 147 U. S. 72, two vessels were in collision in time of fog, and both were held at fault by the District Court. In affirming the decree of the Circuit Court, which held the "City of New York" solely at fault, this Court said (p. 85):—

> "In view of the recklessness with which the steamer was navigated that evening, it is no more than just that the evidence of contributory negligence on the part of a sailing vessel should be clear and convincing. Where fault on the part of one vessel is established by uncontradicted testimony, and such fault is, of itself, sufficient to account for the disaster, it is not enough for such vessel to raise a doubt

with regard to the management of the other vessel. There is some presumption at least adverse to its claim, and any reasonable doubt with regard to the propriety of the conduct of such other vessel should be resolved in its favor."

Similarly, in *The Victory*, 168 U. S. 410, this court held (p. 423):

> "The recognized doctrine is thus stated by Mr. Justice Brown in *The Umbria*, 166 U. S. 404, 409: 'Indeed, so gross was the fault of the "Umbria" in this connection that we should unhesitatingly apply the rule laid down in *The City of New York*, 147 U. S. 72, 85, and *The Ludvig Holberg*, 157 U. S. 60, 71, that any doubts regarding the management of the other vessel, or the contribution of her faults, if any, to the collision, should be resolved in her favor."

In the instant case, the facts which show the reckless manner in which the "LAURA MAERSK" was being navigated, as established by the testimony of her own master (R. pp. 61 to 64) appear in the opinion filed by the majority of the Circuit Court of Appeals (R. 105 to 107), which reads (italics supplied):—

> "The 'Laura Maersk', which was proceeding down the river from Philadelphia, had successively passed Deepwater Point at 11:15 A. M., the light buoy at New Castle Flats at 11:20 A. M., buoy 4-D at 11:31 A. M., and buoy 1-D (on the westerly side of the channel just above buoy 2-D) at 11:35 A. M. While the learned trial judge made no specific finding, it appears *from the testimony of the master of the 'Laura Maersk'* that she had been making speeds varying *from thirteen to eighteen knots an hour between the points above mentioned.* . . . The engines of the 'Laura Maersk' were put full speed astern and she so signalled, but

despite her effort, she collided head-on with the tanker at about 11:37 A. M., from which both ships suffered the damages claimed."

* * * * * * *

"Art. 16 of the Inland Rules of Navigation (June 7, 1897, c. 4, § 1, 30 Stat. 99, 33 U. S. C. A. § 192) provides in part that 'Every vessel shall, in a fog, mist, falling snow, or heavy rainstorms, go at a moderate speed, having careful regard to the existing circumstances and conditions'. . . . ."

* * * * * * *

"It seems clear to us that those in command of the 'Laura Maersk' navigated her in disregard of the requirements of the above rule under the prevailing weather conditions and that the court below properly assigned that fault as 'a cause of the collision'."

In *The Nacoochee*, 137 U. S. 331, 339, this court held:

"In the present case, the steamer discovered the schooner on her starboard bow, about 500 feet away, looming up in the fog. The speed of the schooner was about 4 knots an hour and that of the steamer between 6 and 7 knots. * * * The steamer's engines could be reversed in 12 seconds; but although they were reversed at full speed astern she had not attained backward motion when she struck the schooner. This was not the moderate speed required by the statute."

In *The Umbria*, 166 U. S. 404, this Court held:

"That the 'Umbria' was gravely in fault in the matter of speed is too clear for serious argument. She was within 12 miles of one of the most frequented harbors in the world, in the track of vessels bound into

and out of this harbor, and was running at a speed of from 16 to 19 knots an hour through an intermittent or variable fog * * *. (p. 408).

Indeed so gross was the fault of the 'Umbria' in this connection, that we should unhesitatingly apply the rule laid down in The City of New York, 147 U. S. 72, 85, and the Ludvig Holberg, 157 U. S. 60, 71, that any doubts regarding the management of the other vessel, or the contribution of her faults, if any, to the collision, should be resolved in her favor." (p. 409).

We therefore respectfully submit that the speed of the "Laura Maersk", established by the uncontradicted testimony of her own master, was so reckless and grossly excessive, and sufficient in itself to account for the disaster, that this court should, we respectfully submit, "unhesitatingly apply", as the court said in *The Victory, supra*, "the rule laid down in *Alexandre v. Machan*", and resolve in favor of the "Bohemian Club" any doubts regarding her management, or the contribution of her fault, if any, to the collision.

VI.
CONCLUSION.

The judgment of the Circuit Court of Appeals should be reversed with costs, and the cause should be remanded to that Court with directions to affirm the decree of the District Court.

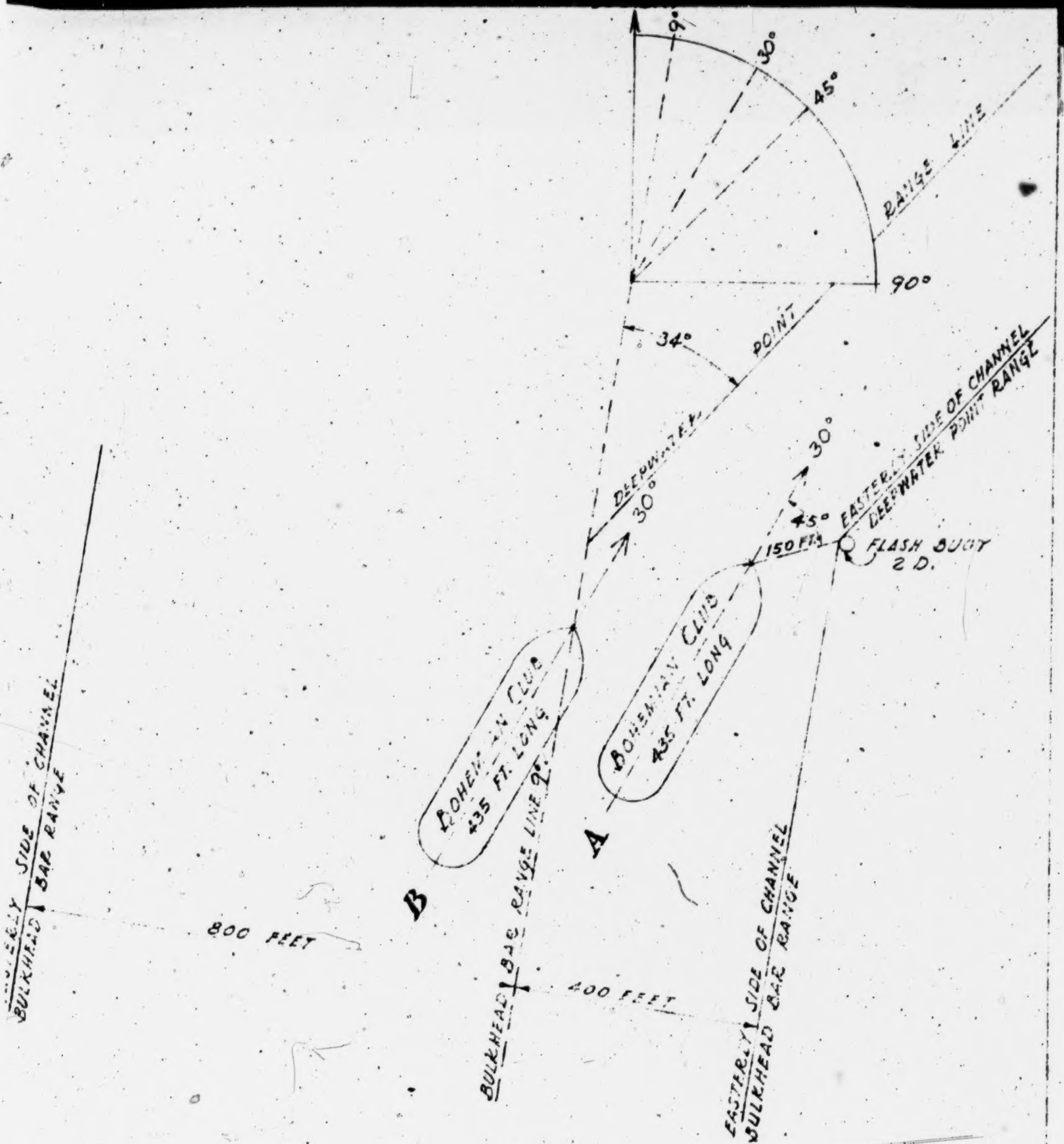
Respectfully submitted,

Otto Wolff, Jr.,
1500 Lincoln-Liberty Building,
Philadelphia, Pa.,
Counsel for Petitioner.

APPENDIX TO BRIEF.

Act of March 3, 1899, c. 425, sec. 15, 30 Stat. 1152; U. S. C. Title 33, Sec. 409:

> "It shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft; or to voluntarily or carelessly sink, or permit or cause to be sunk, vessels or other craft in navigable channels; or to float loose timber and logs, or to float what is known as sack rafts of timber and logs in streams or channels actually navigated by steamboats in such manner as to obstruct, impede, or endanger navigation. And whenever a vessel, raft, or other craft is wrecked and sunk in a navigable channel, accidently or otherwise, it shall be the duty of the owner of such sunken craft to immediately mark it with a buoy or beacon during the day and a lighted lantern at night, and to maintain such marks until the sunken craft is removed or abandoned, and the neglect or failure of the said owner so to do shall be unlawful; and it shall be the duty of the owner of such sunken craft to commence the immediate removal of the same, and prosecute such removal diligently, and failure to do so shall be considered as an abandonment of such craft, and subject the same to removal by the United States as hereinafter provided for."



A. POSITION OF BOHEMIAN CLUB IMMEDIATELY BEFORE MOVING FROM BUOY

B POSITION OF BOHEMIAN CLUB AT TIME OF COLLISON

SCALE 1 INCH = 200 FEET